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November 12, 1992

BY HAND

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: IVDS Applications

Dear Mr. Caton:

Enclosed please find one facsimile original and nine copies
of Comments to the NPRM in PP Docket 93-253.

If the staff should have any questions regarding this
matter, please contact me.

Sincerely,


William E. Zimsky

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of:

Implementation of Section 309(j)
 of the Communications Act
 Competitive Bidding

PP Docket 93-253

TO: The Commission

COMMENTS

The Law Offices of William E. Zimsky hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making, FCC 93-455, released October 12, 1993¹:

I) FEMALE AND MINORITY ALIENS SHOULD NOT RECEIVE ANY PREFERENCES IN BIDDING FOR FCC LICENSES

Aliens may own licenses for certain Private Radio services. However, it would be unconscionable for the U.S. government to give them any preferences over U.S. citizens in the bidding process for those licenses. What possible justification is there for giving a citizen of Spain a preference in bidding for an FCC license over a white male U.S. citizen? Absolutely none. Should Fidel Castro and General Mohammed Farrah Aidid have a preference over a white male U.S. citizen? I think not. (Minority and female

¹ These Comments are being filed one business day late. A Motion for Leave to File Comments One Day Late is being filed herewith. If that Motion is not granted, Zimsky requests that these Comments be considered as informal comments.

preferences have been awarded to aliens in comparative hearings for broadcast licenses.)

**II) THE RSA CELLULAR MARKETS IN WHICH PARTICIPANTS
IN THE RISK SHARING SCHEME RECEIVED LICENSES SHOULD
BE SUBJECT TO RE-LOTTERIES AND NOT TO AN AUCTION**

In the Risk Sharing case, CC Docket 91-142, the Administrative Law Judge revoked the licenses issued to participants in the Risk Sharing scam. Initial Decision, FCC 92D-64, released December 22, 1993. If the licensees had revealed to the FCC that they were participants in the Risk Sharing scam after they were selected as lottery winners they would not have received their licenses in the first place. Id. Therefore, basic equitable principles demand that the applicants who filed applications with the FCC for the RSA cellular markets in which the licenses of the Risk Sharers have been revoked be given the opportunity to participate in a fair lottery.

**III) APPLICATION FEES CAN ONLY BE ASSESSED
AGAINST THE SUCCESSFUL BIDDER**

The NPRM indicates that the FCC will require an applicant wishing to participate in an auction to submit an application fee with its application. NPRM at ¶¶ 96-101. However, the FCC will only process the long form application

of the auction winner. Id. Thus, the FCC is proposing to impose a fee to process applications which will not be processed, i.e., the auction losers. It is patently unreasonable to charge a user fee against someone who does not receive the service the cost of which the user fee was enacted to recoup. Cf. Lindy v. United States, 546 F.2d 371 (Cl. Ct. 1976). Such a scheme is unconstitutional because an unreasonable user fee effects a taking. Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980).

RESPECTFULLY SUBMITTED,

LAW OFFICES OF WILLIAM E. ZIMSKY

By: 

William E. Zimsky, Esq.

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